

ECS File: JPA-89-153  
Project: F029-1-506/H046505C  
Section: SR-169 - Prescott CC  
Villages Lynx Creek

AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE VILLAGES AT LYNX CREEK,  
A Limited Partnership

THIS AGREEMENT is entered into 29 January, 1989<sup>96</sup>, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE VILLAGES AT LYNX CREEK, a Limited Partnership, acting by and through its General Partner (the "Villages").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Villages is empowered to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Partnership.

Incident to an improvement project on State Route 169 the State now has in progress, the Villages has requested, and State has agreed, to construct a deceleration/right turn lane at the Villages entrance (hereinafter referred to as the Project), at the Villages expense, at an estimated cost of \$5,000.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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## II. SCOPE OF WORK

### 1. The State will:

a. Include the work in it's existing improvement project, administer construction and make all payments to the contractor. Be reponsible for any contractor claims for extra compensation due to delays or whatever reason attributable to State.

b. Upon completion approve and accept the Project, and provide maintenance to the right turn lane.

c. Invoice the Villages for the actual cost of the work.

### 2. The Villages will:

a. Deposit with the State a cashiers check in the amount of \$5,000 to be applied to the cost of the Project, prior to the award of a construction contract or construction change order.

b. Reimburse State any reasonable direct actual costs over and above the \$5,000 deposit, within 30 days after receipt of invoice.

c. Be responsible for any contractor claims for extra compensation attributable to the Villages.

## III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a construction contract or change order, upon thirty (30) days written notice to the other party.

2. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

3. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

4. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518 (B) and (C).

5. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

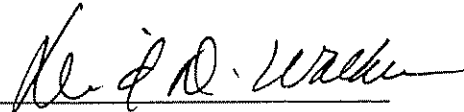
Arizona Department of Transportation  
Engineering Consultants Services  
205 South 17 Avenue, Room 118E  
Phoenix, AZ 85007

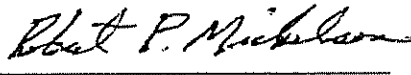
Mr. David Walker, General Partner  
The Villages at Lynx Creek  
PO Box 847  
Dewey, Arizona 86327

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

THE VILLAGES AT LYNX CREEK,  
A Limited Partnership

STATE OF ARIZONA  
Department of Transportation

By   
DAVID D. WALKER  
General Partner

By   
ROBERT P. MICKELSON  
Deputy State Engineer

RESOLUTION

BE IT RESOLVED on this 29th day of November 1989, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the Villages at Lynx Creek, a Limited Partnership for the purpose of constructing a deceleration/right turn lane at their entrance to Prescott Country Club, incident to an improvement project to SR-169.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

A handwritten signature in cursive script, reading "Charles L. Miller", written in dark ink. The signature is fluid and stylized, with a long, sweeping underline that extends to the left.

CHARLES L. MILLER, Director  
Arizona Department of  
Transportation

PARTNERSHIP RESOLUTION NO. 6

OF

THE VILLAGES AT LYNX CREEK LIMITED PARTNERSHIP,  
A Delaware Limited Partnership  
(the "Partnership")

This "Resolution" is intended to be binding on the members of the Partnership as of December 7, 1989, (the "Effective Date") regardless of the actual date of signing.

Background

A. The "Villages at Lynx Creek Limited Partnership", a Delaware limited partnership, was formed pursuant to the execution of the "Partnership Agreement" in October, 1988.

B. The Partnership and David Walker, the "General Partner", have been engaged in a course of activities to implement the purposes of the "Partnership" since that time.

C. Notwithstanding any limitations to the contrary contained in the Partnership Agreement, the undersigned, being all of the Limited Partners and the General partner, wish to authorize, ratify and confirm the following Resolutions.

Resolution


We being all of the Limited Partners of the Partnership, unanimously resolve and agree that:

1. Incorporation By Reference. The provisions of the Background section of this Resolution are incorporated by reference as a material and integral part of this Resolution.

2. Waiver of Notice. The undersigned waive the requirement of notice and agree and that this Resolution is being signed on a unanimous basis pursuant to the provisions of Section 12.3 of the Partnership Agreement or acknowledge receipt of not less than four business days notice and consent to this Resolution pursuant to Section 12.3 of the Partnership Agreement as an action taken at a Partnership meeting attended by a quorum so indicated below.

3. ADOT Agreement No. JPA 89-153. The Partners have reviewed the ADOT Agreement No. JPA 89-153. The Partners believe it is in the Partnership's best interest to enter into that Agreement for the State to construct a deceleration/right turn lane at the entrance to the Villages. The Partners, by signing, below, authorize the General Partner, Dave Walker, to sign the ADOT Agreement No. JPA 89-153 and sign any other related documents to the construction.

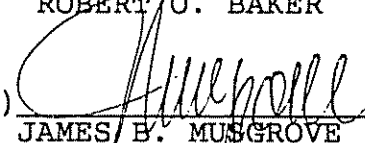
- (6) WILLOW INVESTMENT COMPANY, an  
Arizona general partnership

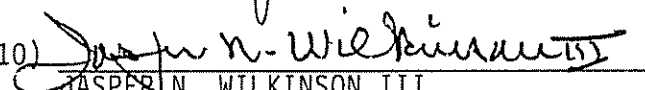
By   
WILLIAM B. FULKERSON  
Its General Partner

- (7) GREENTREE, an Arizona general  
partnership

By   
W.A. KENSON  
Its General Partner

- (8)   
ROBERT O. BAKER

- (9)   
JAMES B. MUSGROVE

- (10)   
JASPER N. WILKINSON III

This Resolution is intended to be legally binding as of the Effective Date. Notwithstanding limitations to the contrary in the Partnership Agreement the Activities and actions described above are ratified and confirmed regardless whether or not any person other than Walker executed the documents evidencing those actions. This Resolution may be relied upon by third parties as evidence of the intention of the Partners that the Partnership be bound as set forth above.

GENERAL PARTNER:

*David D. Walker*  
DAVID D. WALKER

LIMITED PARTNERS:

(1) *Norman W. Fain II*  
NORMAN W. FAIN, II

(2) LARINDA ENTERPRISES, an Arizona corporation

BY *William H. Hyslip*  
WILLIAM H. HYSLIP  
Its President

(3) *Norman W. Fain II*  
NORMAN W. FAIN II, as Trustee  
under Trust Agreement dated  
October 14, 1988, F.B.O. Donna  
Lee Tryba--Revocable Trust

(3) ~~NORMAN W. FAIN, as Trustee under  
Trust Agreement dated May 15, 1963  
F.B.O. DONNA LEE WELLS (aka DONNA  
LEE WELLS (IR) REVOCABLE TRUST,  
aka DONNA LEE TRYBA REVOCABLE  
TRUST)~~

(4) *Norman W. Fain II*  
NORMAN W. FAIN II, as Trustee  
under Trust Agreement dated  
October 18, 1988, F.B.O. Carolyn  
Sue Fain--Revocable Trust

(4) ~~NORMAN W. FAIN, as Trustee under  
Trust Agreement dated May 15,  
1963, F.B.O. CAROLYN SUE FAIN (aka  
CAROLYN SUE FAIN REVOCABLE TRUST)~~

(5) FAIN FAMILY LIMITED PARTNERSHIP,  
an Arizona limited partnership

By Fain Enterprises, Inc., an  
Arizona Corporation, its  
General Partner

By *Norman W. Fain II*  
NORMAN W. FAIN II  
Its President